Charity News

Winter 2022

Introduction

We are delighted to bring you our Winter edition of Charity News, in which we look at a number of matters currently of interest to charities and not-for-profit organisations.

With a number of recent high profile hacking incidents having been in the headlines, our first article addresses Cyber issues. It provides insights on the learnings from the HSE Cyber attack from our specialist colleagues engaged to conduct a post event review of the matter for the HSE.

With the requirement to publish Gender Pay Gap reports in early December 2022, our experts explain what is required, and provide advice for those still working on their disclosures.

Our third article focuses on the EU Whistleblowing Directive, which has been brought into law under the Protective Amendment Disclosure (Amendment) Act 2022, and includes milestones and steps you can take to introduce it into your organisation.

With the environment and sustainability now a global focal point, we have included a further update since our last publication on the impact of the Corporate Sustainability Reporting Directive (CSRD), EU Taxonomy and Corporate Sustainability Due Diligence Directive (CSDD) for your organisation.

Despite the exemption that charities enjoy from corporation and capital gains taxes, in relation to other heads of tax an understanding of Revenue's new Compliance Intervention Framework is essential reading. This applies to all taxpayers, and we provide guidance on the Framework and actions charities can take to reduce the risks of underpayment of taxes.

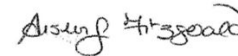
Our final article provides an accounting and regulatory update, focusing on the Charities Amendment Bill 2022, and the financial reporting aspects of the Bills (sections 13 to 16) which provide guidance on such matters as proper books of accounts, statement of accounts, annual audits and annual reports.

We hope you find this issue is helpful in comprehensively updating you on recent developments, as well as highlighting ways to ensure your organisation can equip itself to manage risks and remain compliant.

If you would like to discuss any of the issues discussed in this newsletter, or any other challenges that your organisation may be facing, please contact your regular PwC contact or any of our not-for-profit team noted on page 17.

We would also like to take the opportunity to wish you and your organisation a wonderful Christmas and every success for 2023.

Mairead Connolly
Head of PwC not-for-profit Taxation team



Aisling Fitzgerald
Head of PwC not-for-profit Assurance team

Contents

Learnings from the HSE Cyber attack	3
Gender pay gap	5
Raising your ethical culture	7
Charities and ESG	10
Compliance Intervention Framework	13
Charities – accounting and regulatory update	15
Our PwC not-for-profit team	17

Learnings from the HSE Cyber attack

In May last year, the Irish Health Service Executive ("HSE") was hit by a significant ransomware attack that locked staff out of their computer systems and severely disrupted healthcare across the country.

In the aftermath of the incident PwC were commissioned to conduct an independent post-incident review ("PIR") of the attack. The HSE showed great leadership in taking the bold step of publishing the PIR report, so that other organisations can learn from their experience.

Here's the story behind what happened, and how the key learnings from the PIR report can be applied to all organisations to enhance their ransomware readiness.

Phishing email

On 18 March 2021, an employee opened a booby-trapped Microsoft Excel document in a phishing email that had been sent two days earlier.

Within a few days, the attacker had established a reliable backdoor connection to the employee's infected workstation. After infecting the system, the attacker continued to operate over an eight-week period until they detonated Conti ransomware on 14 May.

As highlighted in the PIR report, and covered by RTE and the BBC in their news articles about the attack, during this period there were multiple warning signs that the attackers were at work. However, there was no technical investigation into the security alerts, and that meant a crucial opportunity to intervene was missed.

Significant impact

The HSE employs approximately 130,000 people to provide health and social care to five million Irish citizens. The Conti ransomware detonation resulted in the near complete shutdown of the HSE's national and local networks, forcing the cancellation of many outpatient clinics and healthcare services. The number of appointments in some areas dropped by up to 80 percent, and doctors, nurses and clinicians had to resort to handwritten notes and manual data entry. Thousands of people's healthcare was disrupted for a period of weeks.

On the day of the attack, the Irish government confirmed that it would not pay a ransom. However (unusually) on 20 May 2021, the attackers posted a link to a decryption key that the HSE could use to recover systems.

Long road to recovery

Work to restore infected systems took months. The HSE enlisted the support of the Irish military to structure their crisis response and help restore systems. It wasn't until 21 September 2021 that the HSE declared 100 percent of its servers were decrypted.

One of our findings was that the attack could have been much more severe. For example, it is unclear how much data would have been unrecoverable if a decryption key had not been made available by the attackers, as much of the HSE's usual disaster recovery environment had been encrypted, and their ability to recover from offline backups was untested.

Our report states that transformational change is required in technology and cyber security to protect the HSE from future incidents. The HSE has accepted our findings and recommendations, and is in the process of putting in place appropriate and sustainable structures and enhanced security measures.

Learnings for charities and other organisations

A number of the vulnerabilities that the ransomware attack highlighted are not unique to the HSE, and issues identified in the PIR report will be found in other organisations. All charities and not-for-profit organisations therefore need to consider the extent to which they are protected from a major cyber incident, and be prepared to respond and recover should they experience such an event.

Section 1 of the PIR report is dedicated to the key learnings that can be applied to all organisations. There are **eight key learnings**, based around the themes of **governance and cybersecurity leadership; effective cyber security capability; and preparedness to respond and recover**.

The points overleaf are presented as recommendations that all organisations should consider in the light of the experience of the HSE, in order to learn lessons from this attack more broadly. They are not intended to be exhaustive, but act as an instructive set of learnings to consider in response to the incident.

Governance and cybersecurity leadership

1. Understanding of technology dependency and governance of technology risk

- Boards and leadership must ensure they understand which of their critical operations are dependent on technology; and
- It's vital that Governance processes and systems ensure cyber and technology risks are properly understood and actively managed.

2. Cybersecurity strategy and leadership

- Ensure you have a cybersecurity strategy that defines key risks, explains how they are being managed, and critically, is supported by the needed resourcing and investment; and
- Appoint a single accountable senior leader responsible for delivering the strategy.

Effective cybersecurity capability

3. Ransomware-specific assessment

- Assess your preparedness for ransomware; and
- Given the heightened threat posed by ransomware attacks it's vital that your controls and processes are capable of effectively defending against this threat. Essentially, you need to identify areas that may require urgent investment.

4. Effective cybersecurity monitoring and response

- An effective security monitoring capability, that can detect and respond to human-operated ransomware groups is paramount; and
- Cyber threat intelligence, skilled resources and practiced processes ensure security alerts are rapidly triaged, investigated and responded to. This is indispensable in the event of an incident.

5. Testing of cybersecurity capability through simulated attacks

- A realistic threat- based perspective of your vulnerability to ransomware and other attacks is essential; and
- Once empowered with this intelligence you can rapidly identify and prioritise key security improvement areas and ensure you can effectively detect common attacks and have the necessary people and processes in place to investigate and respond.

Preparedness to respond and recover

6. Cybersecurity-specific incident response and crisis management plans

- You need to define how a response should be led, managed and coordinated before you suffer an attack; and
- Test and challenge plans to ensure they are effective in a catastrophic ransomware scenario where all IT platforms, cybersecurity tools and usual communication channels are unavailable, and recovery efforts have to be sustained for weeks or months.

7. Business Continuity Planning ("BCP") and IT Disaster Recovery ("DR") planning for a ransomware scenario

- Prioritise BCP and DR that ensures the continuity of critical operations and the ability to recover in the face of a ransomware attack that results in total loss of IT and associated data; and
- A prioritised list of applications and systems to recover as well as secure offline backups that are impervious to ransomware attacks are essential.

8. Retained incident and crisis support

- Establish contractual retainers with key third parties that may be required to support a crisis response.
- Retainers should include: service level agreements; roles and responsibilities; preparedness reviews, and legal agreements (such as non disclosure agreements). To ensure partners can support a response effort immediately and scale to the size of the response required. Your partner's ability to respond and support should be tested before you face a live incident.

Reporting

Finally, ransomware is a crime and if you are the victim of a ransomware attack you should report it to An Garda Síochána at your local garda station. You may also report ransomware incidents to the National Cyber Security Centre ("NCSC") at incident@ncsc.gov.ie.

For more information on how PwC can assist your organisation mitigate your Cyber risk, please contact Pat or Will.

Pat Moran
Cybersecurity Partner
pat.moran@pwc.com
+353 86 380 3738

Will O'Brien
Cybersecurity Director
will.obrien@pwc.com
+353 87 194 7803

Gender pay gap

In our May 2020 insights piece we spoke about the importance of diversity, equality and inclusion in the not-for-profit sector. Specifically in relation to gender pay gap reporting, we advised that organisations **'start early and allow enough time'**.

At that point in 2020, the Gender Pay Gap Information Bill was still in draft. While the legislation had passed the Committee Stage in Dáil Éireann a year previously, there was still no confirmed commencement date or methodology. Organisations which had taken our advice and wanted to get ahead were relying on UK legislation in order to get a sense of their likely Irish gender pay gap, if any.

Equally, in May 2020, the global COVID pandemic was shining a light on societal and health inequalities, demonstrating how gender and other societal stratifiers were resulting in different risks and outcomes. Specifically with regard to gender, the pandemic triggered a fall in female participation in the workforce on foot of COVID. This was caused partially by childcare and domestic work responsibilities, but also due to more women being employed in the sectors hardest hit by the pandemic.

It was against this backdrop that Ireland's Gender Pay Gap legislation finally came into force. The Gender Pay Gap Information Act 2021 was signed into law by the President in July 2021, more than 27 months since it had first been initiated in the Oireachtas. The supporting regulations, which provide clarity on aspects of the reporting obligations, including employer FAQs, were published by the Government 12 months later, in June 2022. Our advice to 'start early and allow enough time' certainly resonated with employers who were now facing a 6 month window to calculate and disclose their gender pay gap.

The first reports are due to be published in December 2022. So what information needs to be contained in an employer's report? Well, aside from the mandatory gender pay gap calculations which each report must disclose, an employer must also:

- explain the reasons why a gender pay gap exists in the organisation, and
- set out what measures, if any, are being taken or proposed to be taken to eliminate or reduce the GPG.

While it is imperative that employers accurately report the numbers, all employers within the scope of the legislation should now be focussed on rolling out an effective communications strategy to engage internal and external stakeholders.

The scope extends to employers with 250 or more relevant employees. As a charity you need to understand which is the employing entity which contracts of employment are with. If that entity has 250 or more employees then they must report.

When the first reports are published on company websites from 1 December 2022 onwards, we anticipate considerable scrutiny from all stakeholders, both internal and external. When the UK introduced gender pay gap reporting in 2017, there was intense media coverage of the highest profile companies and those with the largest gaps.

The companies that fare best will have taken early steps to understand the reasons for their gap. They will now be creating a compelling narrative around it, and developing a robust action plan to close it. Communication of the gap, along with clear steps to address it, should be seen as an opportunity to reinforce leadership's commitment to Diversity, Equity and Inclusion (DE&I) for employees.

Similarly, for those organisations which have invested in DE&I to date, gender pay gap reporting provides a high-profile public platform to communicate their DE&I efforts and strengthen their brand externally, thereby boosting their attractiveness as an employer.

But what about companies who are still collating data and crunching their numbers? While preparing to publish the data is one thing, explaining why any pay gap exists and how you are dealing with any identified pay gap will be crucial to complying with the Regulations.

Our advice is threefold:

1 Set your figure in context

Your figure may be skewed by a number of factors, such as your industry sector. Prepare your narrative to explain the factors that influenced the calculation.

2 Look at policies and practices

Your response to your gender pay gap could attract as much scrutiny as the data itself. Look at policies and practices in key areas such as remuneration, recruitment, talent development, retention, diversity and inclusion. Could they be improved?

For example, one of the key drivers of the gender pay gap is fewer women in senior roles. To create a strong pipeline of female talent, organisations need to identify and remove barriers to entry – and progression – for women at all levels. Analysing recruitment and promotion data with a gender lens will help identify where in the process issues are occurring – at the attraction, shortlisting or selection stages – and inform actions.

3 Tone from the top

We recommend that CEOs and other senior business stakeholders lead communications on gender pay gap reporting. This is particularly important given that gender pay and equal pay are often confused. Prepare for challenges to your report from third parties and, where possible, make an explicit link between gender pay gap reporting and other strategic endeavours, such as ESG. By doing this, companies give themselves the best opportunity to shore-up support and meet the challenge head-on.

And finally, remember, gender pay gap reporting is annual, so a continued focus will be required to monitor and maintain progress.

For more information on how PwC can assist your organisation prepare for mandatory gender pay gap reporting, please contact Doone or Anna.

Doone O'Doherty
Tax Partner
doone.odoherty@pwc.com
+353 87 276 8112

Anna Kinsella
Pensions Group Director
anna.kinsella@pwc.com
+353 87 967 0910

Raising your ethical culture – Protected Disclosures (Amendment) Act 2022

Whether because of misunderstanding or bad intent, breaches of ethics, values, or law happen in every industry and sector of the economy. From accounting and financial reporting fraud to misuse of corporate assets to human resources violations in the areas of diversity and workplace respect, these allegations create organisational risk. All organisations are exposed to such risk when their directors, employees, contractors and other service providers act illegally, unethically or unsafely.

Companies with effective reporting mechanisms suffer fewer and lower losses

Yet often an organisation is only alerted to such behaviour when it is exposed in the media or it attracts the attention of external regulators and law enforcement agencies. Organisations therefore rely on the knowledge and resolve of individuals who are prepared to speak up and notify them of an issue before it reaches the public domain. This is borne out by the statistical data gathered by the Association of Certified Fraud Examiners[1]. 42% of all frauds were detected through tip-offs, with more than half of these notifications coming from people in a work-based relationship with the organisation.

1. ACFE: Report to the Nations 2022

Companies with whistleblower reporting mechanisms detect fraud more quickly and have lower losses than organisations with no reporting channels.

42% of frauds were detected by tips, which is nearly **3x** as many cases as the next most common method

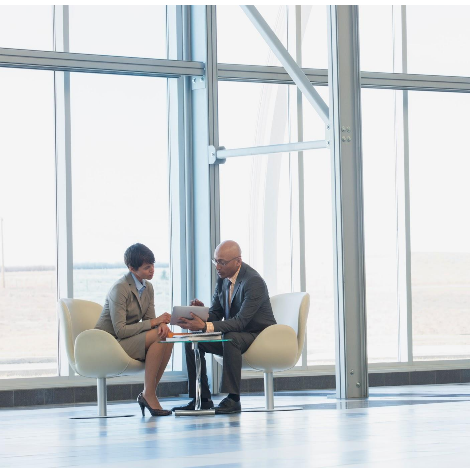
More than **half** of all tips came from employees

Organisations with hotlines detect fraud more quickly and have lower losses than those without hotlines

Building trust is therefore not only the right thing to do; it's now critical for a **company's bottom line – and reputation**.

Fostering a speak-up culture

By building a strong ethical culture, including a well-crafted whistleblower reporting program, not-for-profit organisations can both reduce the frequency of breaches and encourage employees to speak up internally when they become aware of potential wrongdoing. Easily accessible reporting mechanisms and a clearly communicated commitment to investigate reports help demonstrate that a company values transparency, openness, and improvement and will act to uphold those values. Essentially, they act as an organisation's safety net. But a culture of transparency will only flourish only when people feel empowered and secure about elevating suspected problems.



EU Whistleblower Protection Directive

The EU Whistleblowing Directive has now been transposed into Irish law through the Protected Disclosures (Amendment) Act 2022, which has a commencement date of 1 January 2023.

The key change for Irish businesses, including all legal entities operating in the not-for-profit sector, will be the requirement to have detailed, advanced processes for managing whistleblowing complaints.

Private sector organisations with 50* or more employees will be required to establish formal channels and procedures for their employees to make protected disclosures i.e. to report wrongdoing. The reporting channels must:

1. Be secure to ensure confidentiality of the identity of the reporting person;
2. Acknowledge receipt of the disclosure within seven days of receipt;
3. Involve diligent follow up by a designated impartial person(s);
4. Have reasonable timeframes to provide feedback not exceeding three months; and
5. Ensure provision of clear and easily accessible information.

The Act will also extend the scope of persons who are protected if they report a relevant wrongdoing in the workplace to a wider cohort of 'workers' including volunteers, unpaid trainees, board members, shareholders, suppliers, and job applicants.

* There is a derogation to this requirement for organisations with 50 to 249 employees until 17 December 2023.

What types of reporting mechanisms are the most effective?

Historically, telephone hotlines were the most common reporting mechanism provided and operated by companies. However, empirical data indicates that telephone hotline use has declined substantially in recent times, primarily due to the emergence of web-based/online reporting tools. Whistleblowers' preferred methods of reporting wrongdoing are therefore evolving, particularly regarding online and electronic forms.

Internally vs externally hosted reporting mechanisms

Organisations will have to consider whether an internal function or external service provider is chosen to host their reporting mechanism. There's no 'one size fits all' solution when it comes to the development of speak-up arrangements. In contrast, organisations should seek to tailor the design of their whistleblowing arrangements according to their unique operational and cultural circumstances.

There are advantages to outsourcing the operation of reporting mechanisms to an external service provider. In the first instance, external service providers are experienced in operating reporting mechanisms on behalf of other organisations. As such, they're able to do so effectively and economically. Some external providers are also able to provide the service in different languages.

Additionally, and most importantly, the use of a third party service provider can convey the message that the arrangement is truly independent: workers may be encouraged by the knowledge that their report will not be received by someone known to them, and will thus have more faith in the process.

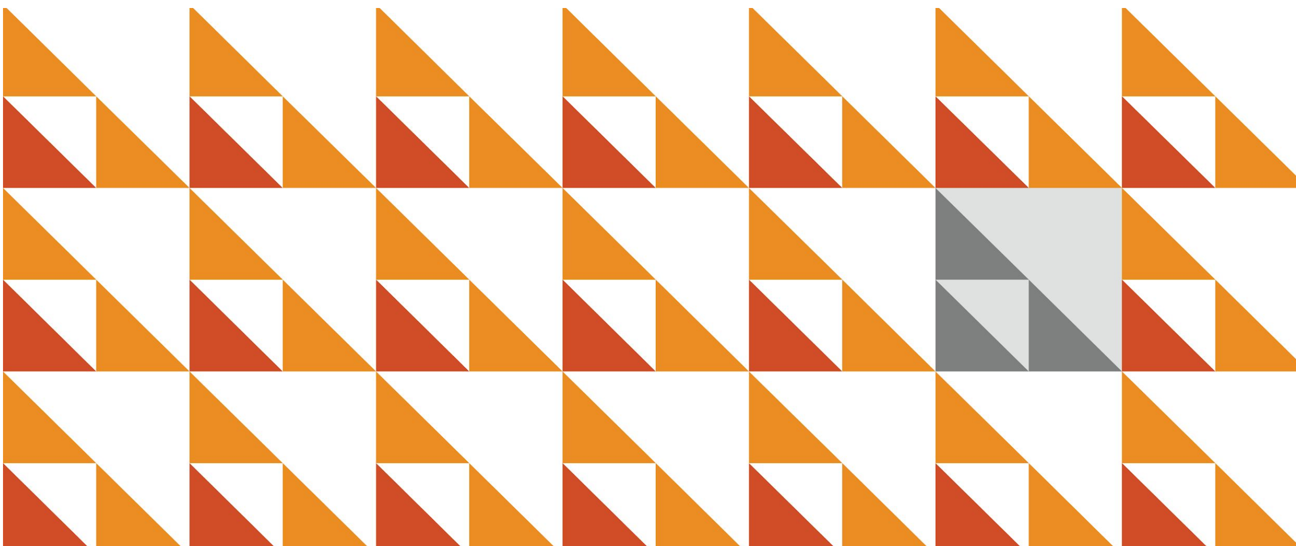
Some Irish employers may believe that keeping the service in-house enables an organisation to retain greater control over the implementation of the system – however, this belief is somewhat misguided. The legislation makes it clear that, whilst the third party may be entrusted with the receipt and acknowledgment of whistleblower reports, the obligation to address and follow up on a disclosure remains with the legal entity concerned.

Ownership within an organisation

Where they exist, audit committees should oversee the operation of whistleblowing arrangements and hold senior management accountable where the arrangements are found to be inappropriate or ineffective. Operational responsibility for whistleblowing arrangements should rest with the body or function that drives compliance within the organisation. Whether this responsibility lies with the board, a delegated function or individual, the arrangement will be most effective where the ultimate process owner is also responsible for compliance risk management.

Developing speak-up reporting arrangements that are effective is no easy task. To assist with this task, we've set out five stages below, each of which can be a milestone in any design and implementation project plan.

The 5 key milestones in the development of an effective whistleblowing programme are:



Given the proximity of the changes, you should start preparing now so that the new whistleblowing culture envisaged by the Act is embedded by the time the law takes effect on 1 January 2023.

There are some straightforward steps you can take now to prepare:

- Assess if, and how, the legislation applies to your company/group of companies
- Decide on a whistleblowing reporting system that suits your requirements and adheres to the legislation
- Delegate an internal person or project team to ensure the necessary changes are implemented on a timely basis
- Review and revise existing policies and processes (if any) to manage and effectively address protected disclosures
- Ensure the procedures are easily accessible and understood by all workers, and communicated to all workers.

For more information on how PwC can assist your organisation in complying with these new requirements, please contact Deirdre or Eoghan.

Deirdre McGrath
Forensic Services Partner

deirdre.mcgrath@pwc.com
+353 86 814 1380

Eoghan Linehan
Forensic Services Director

eoghan.linehan@pwc.com
+353 86 312 4475

Charities and ESG

Charities' contribution to a more sustainable world

As we can see in the media, our world is faced with many environmental degradation issues as well as social and human rights violations. The COVID pandemic has been a catalyst in making us all think about our impact on the natural environment and how dependent we are on mother nature for everything. We are all vulnerable to the changes in our natural environment. It is essential that we all take time to understand these sustainability challenges in the world and try to make a difference in any way that we can to contribute towards a more sustainable society.

Increased global focus on sustainability

Over the last few years, there has been an increased focus from government, regulators, investors, and companies to encourage action in committing to greener, low carbon and more sustainable economies. This has resulted in a number of upcoming additional disclosure requirements for entities of a certain type and size, the most significant of which is the Corporate Sustainability Reporting Directive (CSRD). Other upcoming EU Regulations for charities to be aware of in this regard include the EU Taxonomy and the Corporate Sustainability Due Diligence Directive (CSDDD). While this may not affect the charity sector directly, it will impact the overall environment in which charities operate including increasing stakeholders expectations generally around the quality and relevance of sustainability reporting.

Corporate Sustainability Reporting Directive (CSRD)

CSRD requires comprehensive and granular disclosures about how sustainability issues affect a company's business, as well as the impact of the business' activities on people and the environment (so called "double materiality"). The CSRD disclosure requirements are detailed in European Sustainability Reporting Standards (ESRS) developed by the European Financial Reporting Advisory Group (EFRAG), which has historically advised the European Commission on the endorsement of International Financial Reporting Standards (IFRS). In developing the ESRS, EFRAG's objective is to build upon existing standards and frameworks while remaining consistent with the ambition of the European Green Deal and with EU regulations. EFRAG has submitted twelve standards to the European Commission for approval. These proposals cover cross cutting standards on general strategy and materiality assessment and topical standards covering the Environment, Social and Governance issues.

The proposed disclosures intend to assist stakeholders in assessing a company's focus on sustainability and are interlinked with the company's discussion of its business model and strategy to provide a picture of how the company fits into and contributes to society more broadly. The Council of the European Union is expected to adopt the proposal by the end of November 2022 and is expected that the directive will enter into force at the beginning of 2023 at the latest. Sector standards are also in development, with public consultation expected later in 2022 or 2023.

	Who falls in scope for CSRD?	When will they be in scope for CSRD?
EU Listed Companies	**EU listed companies**, with more than **500 employees** which are already in scope for **NFRD**	**FY 2025:** First report, including limited assurance, to be issued in 2025 on FY 2024 data
Credit institutions	**Credit institutions** (as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013) and **insurance undertakings**. 'Net turnover' definitions for credit institutions and insurance undertakings are prescribed by 86/635/EEC and 91/674/EEC respectively.	**FY 2025:** First report, including limited assurance, to be issued in 2025 on FY 2024 data
Large companies	Companies **operating** in the EU, which meet at least **2 of the following criteria**: - >250 employees or - €40m turnover, or - €20m total assets For **non-European** companies, all companies generating a net turnover of €150m in the EU and which have at least one subsidiary or branch in the EU.	**FY 2026:** First report, including limited assurance, to be issued in 2026 on FY 2025 data
Issuers of securities	Issuers of securities traded on regulated markets within the EU (e.g. ETFs)	**FY 2026:** First report, including limited assurance, to be issued in 2026 on FY 2025 data
Listed SMEs	EU listed SMEs who meet at least **2 of the following criteria**: - 50 to 250 employees and - €8m to €40m turnover, or - €4m to €20m total assets	**FY 2027:** First report, including limited assurance, to be issued in 2027 on FY 2026 data

As can be seen from the table above, the date of implementation depends on the nature of the organisation, with those first subject to the Directive due to report in FY2025 on FY2024 data. Even if not required, Charities and not-for-profits may consider reporting in line with CSRD to demonstrate transparency; improve reputation and trust; and gain access to funds by disclosing non-financial performance in line with the CSRD regulation.

EU Taxonomy

The EU taxonomy is a framework which classifies ‘green’ economic activities in order to foster and accelerate investments that are truly sustainable. Until the establishment of this framework, investment products and economic activities could be classified as ‘green’ or ‘environmentally sustainable’ without a clear and common definition of what ‘green’ or ‘sustainable’ meant. The taxonomy’s goal is to solve this issue by providing clear rules on what can be classified as ‘green’ or ‘environmentally sustainable’, in order to mobilise financing for those economic activities that make a contribution to the EU’s environmental objectives. In short, the goal of the taxonomy is to accelerate green investments by providing transparency to investors, companies and financial institutions. The Taxonomy Regulation sets out criteria that an economic activity has to meet in order to qualify as environmentally sustainable. One important requirement is that the activity ‘substantially contributes’ to one of six environmental objectives. The activity must also not negatively impact on the other specified objectives, ie. do no significant harm (‘DNSH’). As well as these criteria, the economic activity must also meet certain social ‘minimum safeguards’ such as the UN Guiding Principles on Business and Human Rights. Reporting requirements are increasing year on year, with the publication of 4 further environmental objectives for activities to report against expected in 2023. This focus by companies on human rights is likely of interest to many charities. In addition, by reporting in line with the EU Taxonomy, charities could ensure their funds are being used effectively for a positive social and environmental impact in a manner that is consistent with the EU Taxonomy’s classification of these activities.

Corporate Sustainability Due Diligence Directive (CSDDD)

Organisations play a key role in creating a sustainable and fair economy and society. By reporting on adverse impacts on human rights and the environment in global value chains, it will become easier to identify and act on these impacts. Again, while Charities may not find themselves having to report in line with this Directive, many will be interested in the reporting of those organisations who are in scope. In 2022, the European Commission issued its proposal for a Directive on Corporate Sustainability Due Diligence (CSDD) aiming to create a union-wide transparent and predictable framework that helps companies to assess and manage sustainability risks and impacts with respect to core human rights and environmental risks across their value chains. Furthermore, the directive includes a link between the company’s sustainable strategy and the variable remuneration of directors. CSDD applies to the company’s own operations, their subsidiaries and ts entire value chain and is divided into three groups:

Scope of application:

Group 1: Large companies

Companies that are based in the EU with more than 500 employees on average and a net worldwide turnover of more than €150m in the last financial year for which annual financial statements have been prepared.

Group 2: High impact companies

Companies that are based in the EU with more than 250 employees on average and a net worldwide turnover of more than €40m, of which at least 50% was generated in one of the following ‘high risk’ sectors:

- Textiles, leather, clothing, footwear and related products;
- Agriculture, forestry, fisheries, food products;
- Mineral resources, metal products, chemicals.

Group 3: Non EU companies

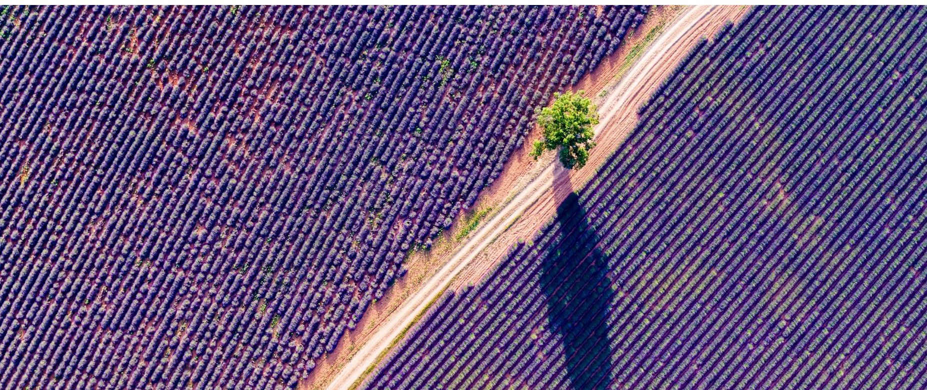
Companies established outside the EU which generated a net turnover of more than €150m in the Union, or, which generated a net turnover of more than €40m, of which 50% was generated in one of the ‘high risk’ sectors.

CSDD will require the companies within its scope to integrate due diligence into policies; identify actual or potential adverse human rights and environmental impacts; prevent or mitigate potential impacts; bring to an end or minimise actual impacts; establish and maintain a complaints procedure; and monitor the effectiveness of the due diligence policy and measures. Charities falling under Group 1 category shall disclose their measures with respect to human rights and environment in line with the CSDD requirement. In the context of pressure from finance providers and regulators being placed on organisations and their value chains to exercise care and adopt efficient due diligence procedures throughout, charities will also need to ensure appropriate due diligence is in place. Stakeholders will increasingly assess these areas and invest or donate accordingly.

How Charities should respond to the Sustainability Reporting developments

Firstly it is imperative that charities formalise their own sustainability reporting, and use frameworks to do so. There are many voluntary sustainability reporting frameworks that are available to use such as the Global Reporting Initiative (GRI), Sustainable Development Goals (SDGs) or the Taskforce on Climate Related Financial Disclosures (TCFD). Many organisations are using these frameworks to report on their sustainability commitments to stakeholders. A reporting framework not only helps to organise and frame sustainability reporting internally for charities, but also helps to inform stakeholders in a digestible manner to enable stakeholders to make informed decisions on organisations and assess their performance in relation to others.

Secondly, charities should ensure they are reporting on their material issues. It is important for charities to ascertain the sustainability issues they are facing which have the greatest impact and these issues should be disclosed to foster transparency. The impacts to assess can be both potential and actual, as well as negative and positive. The sustainability issues with material impacts can affect the charity itself, in the traditional accounting sense of materiality, or can also affect a charity's stakeholders, which is a newer concept of materiality coined 'double materiality' and features as a requirement of the CSRD. Frameworks such as the GRI can be used to assist organisations in conducting a double materiality assessment. By identifying their most material issues, charities can ensure they keep the bigger sustainability challenges they face as an organisation in focus, and win the support and trust of their stakeholders by considering their material sustainability issues too.



Thirdly, charities need to use quality data to inform their reporting. Recently there has been a great deal of dialogue around the need for independently assured sustainability information. Due to this development and the mounting legal frameworks and rules around reporting of sustainability information, it is important for Charities to remain attentive and ensure that they are reporting in line with their stakeholder requirements with the accuracy and credibility of this reporting being front of mind.

Finally Charities should ensure they embed their sustainability considerations within their decision making. This includes completing adequate due diligence (such as reviewing an organisation's sustainability report) prior to interacting with them to identify the organisation's material topics and their impact on the world around them. Providing a weighting to these considerations as part of the procurement process is an example of embedding sustainability in practice.

Over time we expect to see more disclosure by Charities as part of their trustee / annual report on their sustainability commitments and goals and we will expect to see KPIs being developed and disclosed to measure and report progress against these goals. We also expect that in planning for meeting these ESG commitments, sustainability reporting could play a central role.

Conclusion

There is an increased focus from regulators, investors and the public on sustainability due to the recent EU Reporting Regulations, as discussed. Charities should consider their stakeholders' expectations on ESG and include these in trustee / annual reporting. Charities are well placed to tackle sustainability issues. Due to their innate focus on alleviating social issues, if charities can achieve a reorientation towards, and an implementation of, a more formalised approach towards sustainability, this will allow charities to increase and accelerate their contribution towards sustainability goals. By taking steps to report on sustainability, which will foster transparency and win the support of their stakeholders, charities can play an important role in the transition towards a more sustainable world.

Fiona Gaskin
Partner

fiona.m.gaskin@pwc.com
+353 86 771 3665

Melissa Reddy
Senior Manager

melissa.reddy@pwc.com
+353 87 449 2191

Compliance Intervention Framework

Given they generally enjoy exemptions from corporation tax and capital gains tax, charities and those in the not-for-profit sector often feel a false sense of security when it comes to tax. However, in cases where such exemptions apply, it is important to remember that other tax heads such as income taxes, VAT, relevant contracts tax and stamp duty (to name but a few) continue to require compliance.

Earlier this year, Revenue unveiled its new Compliance Intervention Framework, which will have significant implications for all taxpayers, charities included. It adds a further layer of complexity to the ever-changing tax risk and controversy environment, which has been influenced by many factors including real-time reporting, increased tax transparency and the use of dedicated digital resources by Revenue. The latter has enabled enhanced risk profiling, the amassing of valuable taxpayer insights for future profiling, and data interrogation for more targeted interventions. The introduction of the new framework, which is effective from 1 May 2022, is a further evolution in Revenue's approach to confronting non-compliance.

Overview of the framework

The framework, and Revenue interventions more generally, should be considered in the wider context of the self-assessment regime. It is based on the fundamental principle that it is the responsibility of taxpayers to file accurate and timely tax returns. The framework reflects Revenue's graduated response to risk and non-compliance, while providing taxpayers with a mechanism and incentive to voluntarily regularise any tax underpayments. It comprises three intervention "levels", which are designed to support compliance and encourage self-review and self-reporting of tax errors.

Level 1

Level 1 interventions are designed to support compliance by reminding taxpayers of their obligations and providing them with the opportunity to correct errors without the need for a more in-depth intervention. These include:

- self-reviews;
- profile interviews;
- bulk issue non-filer reminders; and
- engagements that fall under the Co-operative Compliance Framework (CCF).

Taxpayers have the option to make an unprompted disclosure when notified of a Level 1 intervention.

Level 2

Level 2 interventions are used by Revenue to confront compliance risks based on the circumstances and behaviour of the taxpayers concerned. They could range from an examination of a single issue within a return to comprehensive tax audits. There are two types of Level 2 interventions:

- audits (the audit process and underlying protocols remain largely unchanged under the new framework); and
- risk reviews (a new concept, which is discussed further below).

Taxpayers have the option to make a prompted qualifying disclosure when notified of a Level 2 intervention.

Level 3

Level 3 interventions take the form of investigations. These occur in cases where Revenue has reason to believe that there has been serious tax/duty evasion or fraud on the part of a taxpayer.

A taxpayer is not entitled to make a qualifying disclosure once notified of an investigation.

Risk reviews

The framework introduces a new concept to the Revenue intervention vocabulary – a 'risk review'. It is a desk-based intervention that focuses on a particular issue in a tax return or a risk identified from Revenue's Risk Evaluation, Analysis and Profiling System (REAP). The risk review notification will set out the issue(s) and period for review, together with any additional information requested by Revenue.

In many ways it replaces an "aspect query", which no longer exists under the new framework. There is, however, one fundamental difference. When a taxpayer was notified of an aspect query under the old Code, they could still make an unprompted qualifying disclosure in respect of tax underpayments. This option is not available for a risk review under the new Framework.

A risk review will commence 28 days after the date of notification. A taxpayer can still make a prompted qualifying disclosure in respect of tax underpayments up to the commencement of the risk review.

It is important to note that the disclosure must include all underpayments in respect of that particular tax head (and not just the particular issue that is the subject of the risk review). Failure to disclose any such underpayments at this point will give rise to significant penalties and may result in publication in Revenue's Tax Defaulters List.

Where underpayments are identified, a taxpayer can request an additional 60 days to prepare the prompted qualifying disclosure. This must be done within 21 days of receipt of the risk review notification.

Key changes to the Code of Practice

The Code of Practice for Revenue Compliance Interventions (the Code), sets out the options available to taxpayers to rectify their tax affairs arising from a self-review or Revenue intervention. To facilitate the introduction of the new framework, Revenue undertook a review of the Code to incorporate any necessary changes. The updated Code came into effect alongside the new framework on 1 May 2022 and applies to notifications issued on or after this date.

Many of the key provisions in the Code remain broadly unchanged, but there are some subtle refinements taxpayers should be aware of:

- To self-correct without penalty, taxpayers must now notify Revenue in writing. It is important to note that amending a tax return on ROS does not satisfy this condition.
- Taxpayers now have a minimum of 28 days (previously 21) to prepare for an audit.
- The deadline for submitting a notice of intention to prepare a prompted disclosure has been increased from 14 days to 21 days.
- There will be no publication in cases where the tax underpayment or refund incorrectly claimed is less than €50,000. Previously, where the combined tax, interest and penalty exceeded €35,000, the settlement was publishable. This increase is very welcome, but it is still a very low threshold for most companies.
- Taxpayers' ability to make a qualifying disclosure in respect of tax underpayments relating to offshore matters has been reinstated.

The key actions charities can take now

The new framework introduces some fundamental changes to Revenue's classification of compliance interventions and taxpayers' ability to make a qualifying disclosure upon notification. This heightens the monetary and reputational risks companies face where tax underpayments arise.

So, how can you proactively manage this risk?

1. Risk assessments

The new framework places a greater onus on taxpayers to ensure that tax filings are correct the first time around. At a minimum, it impels taxpayers to constantly self-review and self-report any tax errors on a timely basis. It is therefore more important than ever that you are aware of your tax risk profile for those tax heads that apply to your organisation. By proactively undertaking a risk assessment, it will enable you to identify any exposures and control deficiencies that could give rise to an underpayment. This will ensure that you can take decisive remediation action and are better placed to deal with a risk review or audit in the future.

2. Leveraging the benefits of self-correction and qualifying disclosure

The monetary and reputational sanctions arising from tax underpayments can be very serious, particularly in the not- for-profit sector where reputation is everything. By regularising underpayments by way of self-correction or a qualifying disclosure, you can avail of significant penalty mitigation and ensure protection from publication in Revenue's Tax Defaulters List.

3. Periodic testing of key controls and areas of potential risk

Establish tax controls if they are not already formally in existence, and once in place, they should be regularly tested to ensure that they remain effective in managing underlying risks. Testing should be embedded into standard operational processes.

We are here to help you

Revenue interventions and disputes present many challenges for charities, many of whom are likely not to have the resources in house to deal with them alone. We, along with our Tax Risk and Controversy team, which includes ex-Revenue officials, have deep expertise in all aspects of Revenue interventions, tax disputes and the proactive management of tax risk. In many cases, our Tax Risk Radar digital tool can help pinpoint tax risks and on this basis, steps can be taken to mitigate them.

We would be happy to deal with any queries and are ready to help you navigate the new Compliance Intervention Framework, ensuring that the monetary and reputational risks you face are carefully managed for your organisation.

Mairead Connolly
Tax Partner
mairead.connolly@pwc.com
+353 86 817 7450

Charities – accounting and regulatory update

I have been speaking to many of my clients for years at this stage about the fact that "Charity SORP" is imminent, and yet we are approaching the end of yet another financial year and the legislation which will provide the framework to enact the SORP in Ireland has still not been passed into law. The big difference this year as compared to our newsletter last year is that the heads of terms of the Charities (Amendment Bill) Bill 2022 has been published, and we are aware that the Oireachtas Committee who work behind the scenes to finalise this Bill and get it ready for enactment are actively doing just that. In the last two months we understand that the Joint Committee on Community Social Protection and Rural Development met with a number of Charity leaders and advocates as well as some experts in the Charity Law field to seek their feedback on certain aspects of the Bill. All of this is a positive development as it is demonstrating a willingness and interest by the Committee responsible to move this legislation forward and to ensure it is fit for purpose.

What is the purpose of the Charities Amendment Bill 2022?

The Charities Amendment Bill 2022 basically amends various aspects of the 2009 Charities Act. In the 2009 Act there was provision made for the issue of regulations in the future to address the accounting and reporting obligations of charities. The Accounting and Reporting Regulations are a separate document to the Bill itself. These were drafted a number of years ago, and were then modified to take account of feedback arising in the course of the public consultation process. These regulations require certain changes to the Charities Act 2009 in order to be enforceable. It is my understanding that the Accounting and Reporting Regulations for charities are well advanced, and what I expect to happen is that the final regulations and the enactment of the bill will happen simultaneously. While there had been some suggestions earlier this year at the time of release of the Heads of Terms of the Charities Amendment Bill 2022 that this Bill may be enacted before the end of 2022, this now looks unlikely, but I believe we can all look forward to the enactment of that Bill and the simultaneous release of the Accounting and Reporting Regulations for Charities during the early part of 2023.

While there are various non-financial aspects to the Charities Amendment Bill 2022, the focus of my article is on the financial reporting aspects, which are covered in sections 13,14,15 and 16 of the Bill.

Section 13 of the Charities Amendment Bill 2022 covers the requirement to keep Proper Books of Account

The Requirement in relation to "maintaining proper books of account" applies to all charities now, including charities who are companies. Previously companies were excluded from that requirement in the Charities Act, but of course they had a somewhat similar obligation under Company Law in any case. But what this change effectively means is that if a charity which is a company is not keeping proper books of account, they may well be held to account by the Director of Corporate Enforcement as well as by the Charity Regulator.

Section 14 of the Bill deals with the Annual Statement of Accounts

From my perspective, as an accountant and an auditor, this section is the most relevant in terms of changes. First of all, the fundamental purpose of the amendments that are being made here is to achieve greater transparency across all charities regardless of form, and that I believe is a really positive development. You will recall that Education Bodies were excluded from the section of the 2009 Charities Act which dealt with accounts and that will remain to be the case following the amendments. Charities which are companies however had also been excluded but that has now changed, and charities who are companies will now have to comply with the accounting rules under Company Law plus any additional requirements specified by charity regulations.

Size exemptions for filing accounts for Corporate Charities will be much lower

In practice charities which were companies were in the past able to avail of various size exemptions which meant they could prepare accounts with less disclosure, or in many cases prepare abridged accounts for filing with the Companies Registration Office (CRO) – and because there was no specific requirements in Charity Law for such charities to file accounts with the Charity Regulator, some organisations were basically not being fully transparent in terms of the financial information that they were publishing. So that will all change, because those charities will have to top up the information they are providing in compliance with Company Law with any additional requirements in Charity Law.

New Three Tiered Accounting and Reporting system based on size

Between the requirements In section 14 of the Bill and the requirements in the Accounting and Reporting Regulations which we expect to see issued alongside the enactment of this bill, we will effectively have what I would see as a 3-tiered system of accounting and reporting for charities based on size:

	Larger Charity	Medium sized Charity	Smaller Charity
Threshold?	> €250k income/expenditure	€25k - €250k income/expenditure	< €25k income- must satisfy 2 of 3 conditions (see below)
Consequences?	Full SORP accounts Full audit	Simplified accounts Independent examination	No accounts No audit

So as you can see in the above chart, larger charities will cover those with income or expenditure greater than €250k. This is up from a threshold of €100k in the 2009 Act. So that is good news, because obviously there are quite a number of charities who would have been above the €100k threshold but not necessarily above the €250k threshold. The main thing to note for charities in the "greater than €250k" threshold is that when Charity SORP becomes mandatory, as we expect it will in the Accounting and Reporting Regulations, you will only have to comply with SORP if your income or expenditure levels are above €250k (not €100k as was previously anticipated).

Bear in mind this threshold is still a lot lower than thresholds used by the Companies Act for full accounts, but it is higher than what we would have originally envisaged. The other threshold which will change in the Bill is the threshold for really small charities (which are the category on the right hand side of the chart above). Charities which meet this size threshold won't have to prepare any accounts at all, unless their own constitution or governing document requires them to.

In order to be exempt they will need to satisfy two of three criteria below in the year in question:

- Balance Sheet total does not exceed (€10k-€50k)*
- Gross income does not exceed (€10k to €50k)*
- Zero employees

* yet to be prescribed (expect this to be set at €25k in Accounting and Reporting Regulations)

As it stands the bill includes a range of €10k-€50k for the first two criteria. My understanding is that the reason for that is that it gives the Regulator scope in the future to increase the threshold in line with inflation etc. but currently we expect this threshold to be set at €25k.

So let's look at a simple example – for example if a charity has €24k of income, €24k balance sheet total and 1 employee they are likely to be exempt from preparing and filing accounts with the CRA, because they satisfy two of the three conditions.

Section 15 of the Bill deals with the Annual Audit

There will be significantly lower thresholds than the Companies Act requirements in relation to the need to have an annual audit for charities who are companies. The threshold for exemption from audit/independent examination is expected to be in line with the threshold for smaller charities as shown in the earlier table, using the same three criteria identified.

If you are considered to be a larger charity (i.e. above the €250k income/expenditure threshold) you will be required to have an audit of your full Charity SORP accounts.

If you are in the category of between €25k income and €250k income you will have to prepare what we expect will be called a set of "simplified accounts" prepared on a "receipts and payments basis" and you will need to have a review of those accounts performed by an independent examiner. The scope of that review will be less than a full audit and and we understand that the scope and framework for that review will be dealt with in the Accounting and Reporting Regulations for Charities.

Section 16 deals with the Annual report

In Section 52 of the 2009 Charities Act, the term "annual report" is used to describe the information that must be filed with the CRA every year as part of the annual filing process. That term was confusing because many people call their annual financial statements an "annual report". So that term has now been amended in the Bill, and is now known as the "annual return" and not the "annual report".

There are no other changes to the annual return in this Bill, however I do understand that there will be a number of changes and enhancements to the information that will require to be reported as part of the annual return process and that these will be dealt with separately in the Accounting and Reporting Regulations.

The other point of note in this section of the Bill is that all charities including charities which are companies will have to submit their accounts to the Regulator with their annual return. There will be no exemption from doing this for charities which also file with the CRO.

So as you can see above, there are lots of changes coming down the line very soon. While the information provided in this article is a guide based on what we currently know about the Bill itself and the Accounting and Reporting Regulations, this is of course subject to change prior to enactment, so we will all be watching closely and will keep you abreast of developments and changes.

For further assistance with your SORP transition or with any aspect of the article, please do not hesitate to contact your usual PwC contact or any of our not-for-profit team, including Aisling and Angela.

Aisling Fitzgerald
Assurance Director
aisling.fitzgerald@pwc.com
+353 87 842 8584

Angela Devaney
Assurance Director
angela.devaney@pwc.com
+353 87 617 6028

Our PwC not-for-profit team

Mairead Connolly
Tax Partner
mairead.connolly@pwc.com
+353 86 817 7450

Aisling Fitzgerald
Assurance Director
aisling.fitzgerald@pwc.com
+353 87 842 8584

Andy Banks
Risk Assurance Partner
andy.j.banks@pwc.com
+353 87 997 8831

Fiona Gaskin
Trust and Transparency Solutions Partner
fiona.m.gaskin@pwc.com
+353 86 771 3665

Ciara Whelan
Tax Director
ciara.whelan@pwc.com
+353 87 629 7480

Angela Devaney
Assurance Director
angela.devaney@pwc.com
+353 87 617 6028

Andy Colloby
Risk Assurance Senior Manager
andrew.x.colloby@pwc.com
+353 87 360 0156

Munro O'Dwyer
Pensions & Investments Partner
munro.odwyer@pwc.com
+353 86 053 6993

Ruth O'Malley
Tax Senior Manager
ruth.omalley@pwc.com
+353 87 185 6195

Rose-Marie McNamara
Assurance Director
rose-marie.mcnamara@pwc.com
+353 86 410 2942

Pat Moran
Cybersecurity Partner
pat.moran@pwc.com
+353 86 380 3738

Anna Kinsella
Pensions Group Director
anna.kinsella@pwc.com
+353 87 967 0910

Tim Simpson
Tax Senior Manager
tim.x.simpson@pwc.com
+353 87 448 6913

Fiona Walsh
Assurance Senior Manager
fiona.walsh@pwc.com
+353 86 859 5870

Fiona Barry
Entity Governance & Compliance Senior Manager
fiona.barry@pwc.com
+353 87 616 5216

Ellen Roche
Executive Search & Reward Director
ellen.roche@pwc.com
+353 87 637 0812

Ken Johnson
Assurance Partner
ken.m.johnson@pwc.com
+353 87 235 1567

Nikita Shetty
Audit Manager
nikita.shetty@pwc.com
+353 87 103 7063

Jacqueline Conroy
Entity Governance & Compliance Senior Manager
jacqueline.conroy@pwc.com
+353 87 280 4814

Michael McDaid
Advisory Partner
michael.j.mcdaid@pwc.com
+353 86 604 6325

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 155 countries with over 327,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.ie.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2022 PwC. All rights reserved.